HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1297 (SS) OF 2001

(Old No. 50744 of 1999)

Darwan Singh,
S/o Shri Bachan Singh Bist,
R/o Village Gheri,
Post Office-Dhab Khal,
Tehsil-Landson,
District-Pauri Garhwal. .....Petitioner.

Versus

1. State of Uttar Pradesh, through the Secretary Education, U.P. Government, Lucknow.
2. District Inspector of Schools, Pauri Garhwal.
3. Principal, Rajkiya Uchchatar Madhyamik Vidyalaya, Khalukhet, District-Pauri Garhwal. .....Respondents.

Dated: 18.08.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Jitendra Chaudhary, Advocate for the petitioner and Standing Counsel for the respondents.

2. By the present writ petition, petitioner has prayed for the following relief:

"(a) Issue a writ, order or direction in the nature of Certiorari quashing the orders of the respondent Nos. 1 and 2 dated 1.11.1999 and 11.11.1999 (Annexure '4' and '5').

(b) Issue a writ, order or direction in the nature of mandamus commanding the respondents to

treat the petitioner in service and to pay him entire due arrears of salary as and when it fall due.

(c) Issue a writ, order or direction in the nature of mandamus commanding the respondents to regularize the service of the petitioner on the post of peon.

(d) Issue any other suitable writ, order of direction which this Hon'ble Court may deem fit and proper.

(e) Award cost of the petition to petitioner."

3. Briefly stated, the petitioner has passed Intermediate Examination from the U.P. Board of High School and Intermediate Education and on account of the vacancy in the Government Intermediate College, Khalukhet Pauri Garhwal, the petitioner was given temporary appointment by letter of appointment dated 12.09.1998 on the pay-scale of Rs. 2550-3200. The appointment letter shows as under:

"Jh njoku flag iq= Jh cpu flag xzke ? kksM+h ih0Bko[kky ftyk ikSM+h&¼ikSM+h x<+oky½ dh fu;qfDr ifjpkyd osru Øe 2550&3200 ds in ij jk0m0ek0fo0 [kkY;w[ksr esa miyC/k fjDr ds izfr 89 fnu ¼uoklh fnu ds fy, vLFkk;h fu;qfDRk izznku dh tkrh gSA ;g fu;qfDr furkUr vLFkk;h gSA tks fdlh Hkh le; iwoZ lwpuk ds lekIr dh tk ldrh gSA bl gsrq lEcfU/kr dks dksbZ ekXkZ O;; ns; ugha gksxkA

¼jes'k pUnz izseh½
ftyk fo|ky; fujh{kd ikSM+h]
ikSM+hx<+okyA"

4. As will appear from the aforesaid appointment letter that the petitioner was given the appointment on the vacant post, which was available at the relevant time. However, from time to time, the period was extended and again on 05.12.1998, the petitioner was given the appointment on the temporary basis on the same pay-scale till the regular appointment takes place.

5. However, by order dated 01.11.1999, the aforesaid appointment was cancelled on the ground that the appointment was wholly irregular as there was a ban in the appointment.

6. Petitioner has challenged the said order by way of present writ petition.

7. At the time of filing of the writ petition on 7th December, 1999, the operation of the order dated 01.11.1999 was stayed. As a result of the aforesaid stay order, the petitioner is still continuing.

8. A counter affidavit has been filed, where in paragraph 13, it has been stated that by appointing the petitioner, the ban imposed by the Government has been violated, and therefore, the appointment was wholly illegal.

9. However, as will appear from the stay order that the same is still continuing, therefore, if the petitioner is still in service, he may continue according to the rules and subject to

the fulfilling of the recruitment process, provided regularly selected candidate has not joined.

10. Subject to the aforesaid, writ petition is dismissed. No order as to costs.

18.08.2006 (Rajesh Tandon, J.)
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